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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.2932 of 2003

PETITIONER: Lakshmikant Soni,
S/o Hiraram Soni,
Aged about 22 years,
R/o Behind Mahadev Gupta Hotel,
Main Road, Tilak Nagar,
Bilaspur (C.G.)

Versus

RESPONDENTS:

1. State of Chhattisgarh,
Through: The Secretary,
Medical Education Department,
D.K.S. Bhawan, Raipur (C.G.)

2. Guru Ghasidas University,
Through: its Registrar, Bilaspur.

3. Chhattisgarh Institute of Medical Sciences,
Through: its Dean, Bilaspur.

POST FOR ORDER ON *24TH SEPTEMBER, 2003*

Sd/-
L.C. Bhadoo
Judge

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Through: its Dean, Bilaspur.

Present: -

Mr. P. Diwaker, Advocate: For the petitioner

Mr. Sanjay K. Agrawal, Deputy A.G.: For the State/respondent No.1

Mr. Manindra Shrivastava, Advocate: For respondents 2 & 3

Before: Hon'ble Shri Justice L.C. Bhadoo

O R D E R

(Passed on 24th September, 2003)

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the action of respondent No.3 by which the petitioner has been communicated that a student who has already been admitted in the Institute in the year 2002-2003 will not be entitled to take re-admission in the Institute for the year 2003-2004.

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2. The petitioner's petition is that he appeared in the entrance examination for MBBS course commencing from the year 2002-2003 conducted by the Chhattisgarh Madhyamik Shiksha Mandal, Raipur, on 12.06.2002 and the result was also declared in July, 2002. But respondent No.3 was not a recognized Institute and ultimately, the Medical Council of India granted recognition in the year 2003. Thereafter, respondent No.3 started giving admissions for that session on 2nd June, 2003. Meanwhile, the petitioner again appeared in the examination conducted by the Chhattisgarh Madhyamik Shishka Mandal on 05.06.2003 & 06.06.2003 for session 2003-2004. However, the petitioner was called for counselling for admission for the session 2002-2003 and he was given admission against the payment seat being an OBC candidate and was directed to pay fees of Rs.1,44,000/- before 10.06.2003. Accordingly, the petitioner deposited the fees and he is prosecuting his studies.

3. Meanwhile, the result of the entrance examination conducted in the month of June, 2003, was declared and the petitioner has been shown at serial No.24 in the merit list of OBC candidates and in the overall merit list he has been shown at serial No.82. Accordingly, on 13th September, 2002, two call letters have been issued to the petitioner for counselling, one treating him as OBC candidate and another treating him as a candidate of general category. In these call letters a condition has been mentioned by respondent No.3 that students who have already been admitted in the Institute for the year 2002-2003 will not be re-admitted for the year 2003-2004. The petitioner contacted the Dean of the Institute, but the authorities have informed him that he is not entitled for free seat as he has already been given admission against payment seat for the year 2002-2003, as such the petitioner cannot be permitted to participate in the counselling commencing from 24th September, 2003. In similar cases, three students namely, Kum. Rashmi Agarwal, Prakash Khunte & Kum. Manjusha Devikar were admitted against the payment seat by

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respondent No.3 and in spite of that they have been given admission in Jawaharlal Nehru Medical College, Raipur, against free seat on the basis of their selection for the year 2003-2004. Therefore, the respondents are not entitled to adopt double standards for giving admission in two different medical colleges and the petitioner is entitled, on the basis of parity, to participate in the counselling. Therefore, the respondents be directed to permit the petitioner to participate in the counselling to be held on 24th September, 2003, and they be further directed to refund the fees of Rs.1,44,000/- paid by the petitioner.

4. Return has been filed on behalf of respondents 2 & 3 in which it has been mentioned that Chhattisgarh Institute of Medical Sciences (hereinafter referred to as ' CIMS') is a medical college established by Guru Ghasidas University. The answering respondents are governed by the rules and regulations of the Medial Council of India and the Institute is also bound to follow the rules, regulations and instructions issued by the State Government from time to time concerning admission to MBBS course. The University being an autonomous Institute and a creature of statute is governed by its own ordinance, statute and regulations.

5. Ordinance No.7 (Annexure R-2/1) has been framed by the University, which generally covers the matter relating to admission. Clause-2 thereof clearly stipulates that admission to the educational institutes shall be made on the basis of merit and seats shall be reserved therein according to the norms laid down by the State Government from time to time. Since the establishment of medical college by the University, it has been framing its own rules of admission, which are consistent with the Government direction and guidelines, and also Government rules relating to admission to MBBS course. For the session 2003-2004, the State Government has promulgated relevant rules for admission to MBBS course in the State of Chhattisgarh, known as

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"*Chhattisgarh Chikitsa Tatha Dunt Chikitsa Snatak Pravesh Pariksha Niyam 2003*". The answering respondents have also framed rules for the year 2003 and general directives were issued by the Government, which relate to admission to all educational institutions including the medical colleges. The answering respondents following the rules and guidelines issued by the State Government in the matter of admission issued circular dated 12.07.2003 (Annexure R-2/2) to all the colleges affiliated to Guru Ghasidas University. In the rules framed by the answering respondents it has clearly been provided that the students who have already been admitted in the year 2002-2003 will not be given re-admission for the year 2003-2004. It has been clearly indicated in the letter issued to the candidates. Rules of 2003 are Annexure R-2/3. Therefore, the petitioner's petition deserves to be dismissed.

6. I have heard the learned counsel for the parties.

7. Mr. P. Diwaker, learned counsel appearing for the petitioner argued that the respondents are not entitled to impose any condition which makes the petitioner ineligible from taking admission in the same course subsequently as at the time of conducting the PMT examination for the year 2003 by the Chhattisgarh Madhyamik Shiksha Mandal, a brochure containing rules and regulations, eligibility criteria was issued and in that brochure no such condition has been laid down and three students who were studying along with the petitioner in the Chhattisgarh Institute of Medical Sciences have already been admitted by Jawaharlal Nehru Medical College, Raipur. Therefore, the petitioner cannot be discriminated by respondent No.3, as respondent No.3 and Jawaharlal Nehru Medical College, both are Government Colleges and they cannot have different rules and regulations in the matter of giving admission to the students. Therefore, this rule is discriminatory.

8. On the other hand, Mr. Manindra Shrivastava, learned counsel appearing on behalf of respondents 2 & 3, argued that respondent

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No.3-Medical College is under Guru Ghasidas University and Jawaharlal Nehru Medical College is not under Guru Ghasidas University. Ordinance No.7 (Annexure R-2/1) is issued by Guru Ghasidas University. By circular dated 12.07.2003 (Annexure R-2/2) of the said University, respondent No.3 issued rules governing the admission to MBBS course (Annexure R-2/3). As per rule 2.6.2 (b), a rule has been framed according to guideline No.9.1 issued by the Government of Chhattisgarh regarding the admission in graduate and post-graduate colleges for the year 2003-2004 that if anyone has taken admission in CIMS, Bilaspur, for the session 2002-2003 then, he will not be entitled to take re-admission in the same class for the session 2003-2004.

9. Having heard the learned counsel for the parties and having perused the relevant record, Guru Ghasidas University, under whose control the CIMS is functioning, issued Ordinance No.7 regarding admission of students to a college, university, teaching department or school of studies, transfer of students and maintenance of discipline. Rule 2 of Ordinance No.7 prescribes that admission to a educational institutions shall be made on the basis of merit and seats shall be reserved therein according to the norms laid down by the State Government from time to time and under this Rule, respondent No.3 issued brochure regarding admission to MBBS course containing the rules for the year 2003-2004 (Annexure R-2/3). Rule 2.6.2 (b) of Rules for Admission for MBBS course prescribes that if a student has taken admission for the session 2002-2003, then he/she will not be entitled to seek re-admission for the session 2003-2004. It is admitted position that the petitioner had already taken admission in the first year of MBBS course for the session 2002-2003 and he has deposited the fees also and pursuing studies since June, 2003, as the admission for the session 2002-2003 was delayed for the reason that CIMS could not get recognition by the Medical Council of India and Medical Council of India recognized CIMS very late. Therefore, admissions for the session 2002-2003 which were supposed to be given in the month of July/August, 2002, were

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given only in the month of June, 2003. Therefore, since the petitioner has already taken admission against the payment seat for the session 2002-2003, as such he is not entitled to take re-admission in the same course for the year 2003-2004 against the free seat, even if he has secured merit in the PMT examination. CIMS is within its right to prescribe such condition and this not arbitrary, irrational and ultra-virus to Articles 14 & 16 of the Constitution of India.

10. In similar situation, the Hon'ble Apex Court in the case of **Mabel vs. State of Haryana and others** reported in **(2002) 6 SCC 318** held that "the intention of the authority concerned in framing clause 18 appears to be to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in the midstream. The candidate should not abandon the studies after the commencement of that course to seek admission in another course which is in the public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission, and further, such a change would deprive another eligible candidate from seeking admission to the other course."

11. Now, coming to the question of discrimination, Jawaharlal Nehru Medical College is not under Guru Ghasidas University and if that college has not prescribed such condition, that does not mean that CIMS which is under the control of Guru Ghasidas University is not entitled to prescribe any such condition which disentitles a candidate to seek re-admission in the same course in the subsequent year, because under Ordinance No.7, the University has given authority and under Rule 2 of Ordinance No.7, the medical college and University are entitled to prescribe such conditions. Even otherwise, even though Jawaharlal Nehru Medical College also ought to have, having regard to guideline No.9.1 issued by the State Government for the session 2003-2004, inserted such a clause, but inadvertently, or otherwise, if

Jawaharlal Nehru Medical College has not incorporated such condition, then the petitioner cannot take advantage of that nor can ask for as a right that CIMS should not also incorporate any such condition which disentitles the petitioner to seek re-admission in the same course in the subsequent year. Therefore, there is no substance in the argument of the learned counsel for the petitioner on this ground also.

12. Now, coming to the argument of the learned counsel for the petitioner that Chhattisgarh Madhyamik Shiksha Mandal who conducted the PMT examination for the session 2003-2004 has not prescribed any such condition in the brochure issued by that Mandal, therefore, CIMS is not entitled to frame separate rule which disentitles the petitioner from admission, I do not find any force in this argument also for the reason that CIMS is a medical college which is working under the control of Guru Ghasidas University and it is within its right to frame rules and guidelines regulating the admission to MBBS course and respondent No.3-Medical College is also entitled to conduct entrance examination for the admission. But on account of delay in recognition by the Medical Council of India, respondent No.3 per-force has to ask for the merit list of the students which was prepared by the Mandal after conducting the PMT examination as very short time was left with respondent No.3 as per the guidelines issued by the Supreme Court that no admissions can be given after the month of September by the Medical Colleges. The norms and guidelines regarding the admission fixed by the Mandal in any way cannot bind respondent No.3 to abide by or follow those norms.

13. In view of the foregoing reasons, I am of the opinion that the petition of the petitioner is devoid of merit and the same is liable to be dismissed. Accordingly, the petition is dismissed.

Sd/-
L.C. Bhadoo
Judge

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